

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 441

FINAL READING

Introduced by Council, 11; Cook, 13.

Read first time January 20, 2009

Committee: Urban Affairs

A BILL

1 FOR AN ACT relating to transcripts; to amend sections 14-813,
2 15-1202, 15-1203, 15-1204, and 19-2424, Reissue Revised
3 Statutes of Nebraska; to change provisions relating
4 to the costs of transcripts of certain municipal
5 proceedings; and to repeal the original sections.

6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 14-813, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 14-813 Whenever the right of appeal is conferred by
4 this act, the procedure, unless otherwise provided, shall be
5 substantially as follows: The claimant or appellant shall, within
6 twenty days ~~from~~ after the date of the order complained of, execute
7 a bond to such city with sufficient surety to be approved by the
8 clerk, conditioned for the faithful prosecution of such appeal,
9 and the payment of all costs adjudged against the appellant. Such
10 bond shall be filed in the office of the city clerk. ~~It shall~~
11 ~~be the duty of the city clerk, on payment or tender to him of~~
12 ~~the costs of the transcript, at the rate of ten cents per hundred~~
13 ~~words, to prepare~~ Upon the request of the appellant and the payment
14 by the appellant to the city clerk or his or her designee of
15 the estimated cost of preparation of the transcript, the city
16 clerk shall cause a complete transcript of the proceedings of the
17 city relating to ~~their~~ its decision ~~thereon.~~ to be prepared. The
18 cost of preparing the transcript shall be calculated in the same
19 manner as the calculation of the fee for a court reporter for
20 the preparation of a bill of exceptions as specified by rules
21 of practice prescribed by the Supreme Court. At such time as the
22 completed transcript is presented to the appellant, the appellant
23 shall pay the amount of the cost of preparation in excess of
24 the estimated amount already paid or shall receive a refund of
25 any amount in excess of the actual cost. An appellant determined

1 to be indigent shall not be required to pay a bond or any
2 costs associated with such transcript preparation. For purposes of
3 this section, indigent means the inability to financially pursue
4 the appeal without prejudicing the appellant's ability to provide
5 economic necessities for the appellant or the appellant's family.
6 Indigency shall be determined by the court having jurisdiction over
7 the appeal upon motion of the appellant. The court shall make a
8 reasonable inquiry to determine the appellant's financial condition
9 and shall consider such factors as the appellant's income, the
10 availability to the appellant of other resources, including real
11 and personal property, bank accounts, social security benefits,
12 and unemployment or other benefits, the appellant's normal living
13 expenses, the appellant's outstanding debts, the number and age of
14 the appellant's dependents, and other relevant circumstances. It
15 shall be the duty of the claimant or appellant to file a petition
16 in the district court as in the commencement of an action within
17 thirty days ~~from~~ after the date of the order or award appealed
18 from, and he or she shall also file such transcript before answer
19 day. The proceedings of the district court shall thereafter be
20 the same as on appeal from the county board. Any taxpayer may
21 appeal from the allowance of any claim against the city by giving
22 a bond and complying with ~~the foregoing provisions,~~ PROVIDED, the
23 ~~foregoing provisions~~ this section.

24 This section shall not be so construed as to prevent the
25 city council from once reconsidering ~~their~~ its action on any claim

1 or award upon ten days' notice to the parties interested.

2 Sec. 2. Section 15-1202, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 15-1202 (1) The party appealing shall within thirty days
5 ~~from~~ after the date of the order or decision complained of: ~~(1)~~ File
6 (a) file a notice of appeal with the city clerk specifying the
7 parties taking the appeal and the order or decision appealed from
8 and shall serve a copy of the notice upon the city attorney and
9 (b) deposit the fees and bond or undertaking required pursuant to
10 subsection (2) of this section or file an affidavit pursuant to
11 subsection (3) of this section. The notice of appeal shall serve as
12 a praecipe for a transcript. ~~+~~

13 (2) Except as provided in subsection (3) of this section,
14 the appellant shall:

15 ~~(2)~~ (a) Deposit with the city clerk a docket fee in the
16 amount of the filing fee in district court for cases originally
17 commenced in district court;

18 ~~(3)~~ (b) Deposit with the city clerk a cash bond or
19 undertaking with at least one good and sufficient surety approved
20 by the city clerk, in the amount of two hundred dollars, on
21 condition that the appellant will satisfy any judgment and costs
22 that may be adjudged against him or her; and

23 ~~(4)~~ (c) Deposit with the city clerk the fees for
24 the preparation of a certified and complete transcript of the
25 proceedings of the city relating to the order or decision appealed.

1 (3)(a) An appellant may file with the city clerk an
2 affidavit alleging that the appellant is indigent. The filing of
3 such an affidavit shall relieve the appellant of the duty to
4 deposit any fee, bond, or undertaking required by subsection (2) of
5 this section as a condition for the preparation of the transcript
6 or the perfecting of the appeal by the appellant subject to the
7 determination of the court as provided in section 15-1204. In
8 conjunction with the filing of the petition for appeal as provided
9 for in section 15-1204, the appellant shall file a copy of the
10 affidavit alleging his or her indigency and the district court
11 shall rule upon the issue of indigency prior to the consideration
12 of any other matter relating to the appeal as provided in section
13 15-1204.

14 (b) An appellant determined to be indigent under this
15 subsection shall not be required to deposit any fee, bond,
16 or undertaking required by subsection (2) of this section.
17 For purposes of this section, indigent means the inability to
18 financially pursue the appeal without prejudicing the appellant's
19 ability to provide economic necessities for the appellant or the
20 appellant's family.

21 (c) An appellant determined not to be indigent shall,
22 within thirty days after the determination, deposit with the city
23 clerk the fees and bond or undertaking required by subsection (2)
24 of this section. The appeal shall not proceed further until the
25 city clerk notifies the court that the appropriate deposit has been

1 made.

2 Sec. 3. Section 15-1203, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 15-1203 ~~The~~ (1) Except as provided in subsection (2) of
5 this section, the city clerk, on payment to him or her of the costs
6 of the transcript, shall transmit within fifteen days to the clerk
7 of the district court the docket fee and a certified and complete
8 transcript of the proceedings of the city relating to the order or
9 decision appealed. After receipt of such fee and transcript, the
10 clerk of the district court shall docket the appeal.

11 (2) If the appellant files an affidavit alleging that he
12 or she is indigent pursuant to section 15-1202, the city clerk
13 shall transmit within fifteen days to the clerk of the district
14 court a certified and complete transcript of the proceedings of the
15 city relating to the order or decision appealed. After receipt of
16 the transcript, the clerk of the district court shall docket the
17 appeal.

18 Sec. 4. Section 15-1204, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 15-1204 (1) The party appealing shall file a petition
21 within thirty days ~~from~~ after the date the transcript is filed in
22 the district court. ~~Satisfaction~~

23 (2) Except as provided in subsection (3) of this section,
24 satisfaction of the requirements of subsections (1) and (2) of
25 section 15-1202 and subsection (1) of this section shall perfect

1 the appeal and give the district court jurisdiction of the matter
2 appealed.

3 (3) Indigency shall be determined by the district court
4 having jurisdiction of the appeal upon motion of the appellant
5 before the court considers any other matter relating to the
6 appeal. The court shall make a reasonable inquiry to determine the
7 appellant's financial condition and shall consider such factors as
8 the appellant's income, the availability to the appellant of other
9 resources, including real and personal property, bank accounts,
10 social security benefits, and unemployment or other benefits, the
11 appellant's normal living expenses, the appellant's outstanding
12 debts, the number and age of the appellant's dependents, and other
13 relevant circumstances. If the appellant is deemed to be indigent,
14 the satisfaction of the requirements of subsections (1) and (3) of
15 section 15-1202 and subsection (1) of this section shall perfect
16 the appeal and give the district court jurisdiction of the matter
17 appealed.

18 Sec. 5. Section 19-2424, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 19-2424 ~~It shall be the duty of~~ (1) Upon the request of
21 the owner appealing a special assessment and the payment by him
22 or her of the estimated cost of preparation of the transcript to
23 the city or village clerk or such clerk's designee, the city or
24 village clerk, on tender or payment to him of the cost of preparing
25 the transcript at the rate of ten cents per one hundred words,

1 ~~to prepare~~ shall cause a complete transcript of the proceedings
2 before such city or village to be prepared. The cost of preparing
3 the transcript shall be calculated in the same manner as the
4 calculation of the fee for a court reporter for the preparation of
5 a bill of exceptions as specified by rules of practice prescribed
6 by the Supreme Court. At such time as the completed transcript is
7 provided to the appellant, the appellant shall pay the amount of
8 the cost of preparation which is in excess of the estimated cost
9 already paid or shall receive a refund of any amount in excess
10 of the actual cost. An appellant determined to be indigent shall
11 not be required to pay any costs associated with such transcript
12 preparation.

13 (2) For purposes of this section, indigent means the
14 inability to financially pursue the appeal without prejudicing
15 the appellant's ability to provide economic necessities for the
16 appellant or the appellant's family. Indigency shall be determined
17 by the court having jurisdiction over the appeal upon motion
18 of the appellant. The court shall make a reasonable inquiry to
19 determine the appellant's financial condition and shall consider
20 such factors as the appellant's income, the availability to the
21 appellant of other resources, including real and personal property,
22 bank accounts, social security benefits, and unemployment or other
23 benefits, the appellant's normal living expenses, the appellant's
24 outstanding debts, the number and age of the appellant's
25 dependents, and other relevant circumstances.

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1 Sec. 6. Original sections 14-813, 15-1202, 15-1203,
2 15-1204, and 19-2424, Reissue Revised Statutes of Nebraska, are
3 repealed.